



Reference number: TT/APL/LBTT/2016/0005

THE TAX TRIBUNALS FOR SCOTLAND
FIRST-TIER TRIBUNAL

Land and Buildings Transaction Tax – LBTT – Penalty for late submission of LBTT return – whether there was a reasonable excuse – no – sections 237 and 239 of the Revenue Scotland and Tax Powers Act 2014 – respondents’ obligations when a review is requested – appeal allowed

CLASSIC LAND AND PROPERTY LIMITED

Appellant

- and -

REVENUE SCOTLAND

Respondents

TRIBUNAL: P F Doyle – Legal Member
Mrs C Barbour CA CTA (Fellow) – Ordinary Member

The Tribunal determined the appeal on 12 December 2016 without a hearing under the provisions of Rule 27 of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (default paper cases) having first read the Notice of Appeal dated 12 August 2016 (with enclosures) and Revenue Scotland’s Statement of Case (with enclosures) acknowledged by the Tribunal on 30 September 2016 and the Appellant’s reply dated 27 October 2016.

DECISION

1. This is an appeal by Classic Land and Property Ltd, a company incorporated under the Companies Acts (registered number SC476774) and having a place of
5 business at 21 Wester Cleddens Road, Bishopbriggs, Glasgow G64 2NG (“Classic”) against two penalty notices, both dated 6 April 2016, issued by Revenue Scotland (“RS”) under sections 159, 160 and 161 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”). RS issued the notices believing that Classic had failed to make a
10 Land and Buildings Transaction Tax (“LBTT”) return under section 29 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTTA”) timeously, and because that failure continued for more than three months.

The Facts of the Case

2. Classic purchased a property in Renfrewshire. The settlement date for that transaction was 3 April 2015. Classic’s solicitors admit that they did not submit a
15 LBTT return in respect of the transaction until 17 February 2016. It is common ground that the return was submitted late because of the solicitors’ error. Classic’s solicitors candidly admit that because the value of the transaction was only £41,000 and because a significant amount of work was required after the date the transaction settled (to rectify the title deed and so enable registration of Classic’s new title) the
20 requirement to lodge a LBTT return with RS was overlooked.

3. The return should have been made not later than 3 May 2015. It was in fact received on 17 February 2016. The return was 290 days late. Because of the value of the transaction, no tax was payable. RS issued penalty notices on 6 April 2016 with penalty dates of 4 May 2015. RS’s first late return penalty notice requires Classic to
25 pay £100. The second penalty notice is for the failure to make a LBTT tax return for a period in excess of three months and requires Classic to pay £900.

4. Classic’s solicitors sought a review of the two penalty notices. RS carried out a review and adhered to the decision to issue the two penalty notices. Classic appealed against RS’s decision arguing that there are exceptional circumstances surrounding
30 the settlement of the transaction which amount to a reasonable excuse for failure to make a LBTT return on time, relying on section 178 of RSTPA, and that the imposition of a penalty when no tax is payable is unduly harsh.

Legislation

5. Section 159 of RSTPA says:

35 (1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 82).

	Tax to which return relates	Return
1	Land and buildings transaction tax	(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013. (b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.
2	Scottish landfill tax	Return under regulations made under section 25 of the LT(S) Act 2014.

(2) If P's failure falls within more than one provision of this section or of sections 160 to 167, P is liable to a penalty under each of those provisions.

5 (3) But where P is liable for a penalty under more than one provision of this section or of sections 160 to 167 which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

(4) In sections 160 to 167 "penalty date", in relation to a return, means the day after the filing date.

(5) Sections 160 to 163 apply in the case of a return falling within item 1 of the table.

(6) Sections 164 to 167 apply in the case of a return falling within item 2 of the table.

10 6. Sections 160 and 161 of RSTPA say:

160 Land and buildings transaction tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 159.

(2) P is liable to a penalty under this section of £100.

15 161 Land and buildings transaction tax: 3 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) —

(a) P's failure continues after the end of the period of 3 months beginning with the penalty date,

(b) Revenue Scotland decides that such a penalty should be payable, and

20 (c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.

(2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).

- (3) The date specified in the notice under subsection (1)(c) —
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

7. Section 175 of RSTPA says:

- 5 Reduction in penalty under sections 159 to 167 for disclosure
- (1) Revenue Scotland may reduce a penalty under sections 159 to 167 where P discloses information which has been withheld by a failure to make a return (“relevant information”).
 - (2) P discloses relevant information by —
 - 10 (a) telling Revenue Scotland about it,
 - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
 - (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.
 - 15 (3) Reductions under this section may reflect —
 - (a) whether the disclosure was prompted or unprompted, and
 - (b) the quality of the disclosure.
 - (4) Disclosure of relevant information —
 - 20 (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
 - (b) otherwise, is “prompted”.
 - (5) In relation to disclosure, “quality” includes timing, nature and extent.

8. Section 177 of RSTPA says:

Special reduction in penalty under Chapter 2

- 25 (1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) “special circumstances” does not include —
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
 - 30 (3) In subsection (1) the reference to reducing a penalty includes a reference to —
 - (a) remitting a penalty entirely,
 - (b) suspending a penalty, and
 - (c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

5 9. Section 178 of RSTPA says:

Reasonable excuse for failure to make return or pay tax

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.

10 (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2) —

15 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

20 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

10. Section 239 of RSTPA says:

Notification of conclusions of review

(1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within —

25 (a) the period of 45 days beginning with the relevant day, or

(b) such other period as may be agreed.

(2) In subsection (1) "relevant day" means the day when Revenue Scotland notified the appellant of Revenue Scotland's view of the matter in question.

30 (3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland's view of the matter in question (see section 237(1)) is upheld.

(4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

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11. Section 250 of RSTPA says:

Interpretation

(1) In this Part “matter in question” means the matter to which a review, mediation or appeal relates.

5 (2) In this Part a reference to the appellant includes a person acting on behalf of the appellant except in relation to—

(a) notification of Revenue Scotland's view under section 237(1), and

(b) notification of the conclusions of a review under section 239.

10 (3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

Analysis

12. There is no real dispute about the facts of this case. The issue for us is whether or not the difficulties that Classic’s solicitors encountered in resolving an error in the title deeds discovered after settlement of the transaction, and the effect that had on their ability to make a return timeously, constitutes a reasonable excuse for the late delivery of the LBTT return.

13. The obligation to ensure the LBTT return is delivered to RS and for any duty to be paid within 30 days of the date of settlement rests with Classic. The parties agree that the value of this transaction is substantially below the threshold for payment of LBTT, so that no tax was payable. The fact that no tax is payable is not determinative of this appeal. RS requires a return in order to assess whether or not liability to LBTT has been correctly calculated.

14. Classic’s solicitors candidly admit that it is their fault that a completed LBTT tax return languished on their own file. They apportion the blame in part to difficulties discovered after settlement preventing registration of title and to their focus on continued negotiations with the selling solicitors.

15. The argument for Classic does not amount to a reasonable excuse because Classic relied on their solicitors to submit the return timeously. Section 178(3)(b) of the 2014 Act operates against Classic.

16. Classic argues that if a penalty is imposed it should be a lesser penalty because of a combination of the confused circumstances of settlement of this transaction and because the transaction does not attract liability to LBTT.

17. The harsh reality is that although this transaction presented difficulties for Classic’s solicitors, there were no difficulties in completion of the return. Classic’s solicitors’ candidly concede that the completed return was ready for submission. All that has happened in this case is that Classic’s solicitors’ attention was distracted and they overlooked the requirement to take a completed form from his file and post it to

RS. In the particular circumstances of this case there are no arguable grounds for reduction of the penalty.

18. There is no reliable evidence before this Tribunal that Classic made the facts and circumstances surrounding settlement of this transaction known to RS. The first RS
5 knew of this transaction was the late submission of the LBTT return 290 days after the transaction had settled, on 17 February 2016.

19. There is one additional matter for us to consider. It is common ground that Classic requested a review of the decisions to issue penalty notices. It is also common ground that that review was completed by RS.

10 20. When any appellant requests a review of a decision, Revenue Scotland are required to notify that appellant of the review because of the operation of section 237(1) of RSTPA. When Revenue Scotland complete a review, section 239 of RSTPA obliges Revenue Scotland to notify the 'appellant' of the conclusion of that review.

15 21. Classic's solicitors requested a review by letter dated 4 May 2016. RS issued a notice under section 237(1) on 2 June 2016. At the conclusion of the review RS issued a section 239 notice on 15 July 2016. Both of those notices were sent to Classic's solicitors. Neither of those notices were sent to Classic.

20 22. The net result is that the review process has not been conducted properly in accordance with the statutory requirements. RS argue that failure to intimate to Classic is immaterial because intimation has been made to an agent who has exercised a right of appeal. That argument ignores the fact that statute expressly requires intimation on the appellant and provides for a permissive intimation to the appellant's agent. Taxpayers' rights where penalties for non-compliance are being levied need to be observed. A failure to send notices in terms of sections 237 and 239
25 of RSTPA is a failure to comply with a statutory requirement. In effect, the appellant has not been provided with the outcome of the review or a final decision regarding the penalty charge.

23. Revenue Scotland's own published guidance includes the following:

Notifying you about our conclusions

30 We must notify you** about the conclusions of our review (and the reasoning behind those conclusions) no later than 45 days from the day we notified you about our view of the matter in question. This time limit may be varied if both you and we agree to do so.

35 If we do not notify you** about the conclusions of our review within this time period, the review is treated as having concluded that our view of the matter in question has been upheld, and we must notify you of that fact.

** 'You' in this circumstance does not include an agent. We must notify the appellant about the conclusions of our review, but a copy of the notification may be given to the agent (see section 250(3) of the RSTPA).

24. On the facts as we find them to be, RS have failed to follow both the statutory procedure and their own guidance. The failure to follow statutory provision vitiates all subsequent procedure.

Decision

5 25. The appeal is allowed. Classic should have met its statutory obligations by filing its tax return on time but RS has not followed its statutory obligations either and so the penalty cannot be enforced.

10 26. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Section 34 RSTPA and Regulation 40 of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015. The application must be received by this Tribunal within 30 days from the date this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the
15 First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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P F Doyle
TRIBUNAL LEGAL MEMBER:
RELEASE DATE: 14 December 2016

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